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In The

# Supreme Court of the United States

## OCTOBER TERM, 1956

No. ~~1080~~ 185

LESLIE E. BROWN, Individually, and as Next Friend for NORMAN BROWN, a Minor,

*Petitioner,*

*v.*

PANHANDLE AND SANTA FE RAILWAY COMPANY,

*Respondent.*

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE SUPREME COURT OF THE UNITED STATES:

Respondent would show that Certiorari should be denied in this case because:

### REASONS FOR DENYING THE WRIT

1. The Petition for Writ of Certiorari does not sufficiently comply with the Rules of this Court to entitle it to consideration. It is but a composite reprint of a mass of Motions for Rehearing formerly filed in and addressed to the Court of Civil Appeals and the Supreme Court of Texas.

2. The Petition for Writ of Certiorari is misleading, and does violent injustice to the Record in the following particulars, and others:

(a) At pages 4, 6, 25 and 34 of the Petition, it is said that a juror "not only concealed", but "denied" acquaintance with a witness on voir doir examination, but the quotation from the record, appearing on page 11 of the Petition, shows that the juror was not interrogated specifically on the point, and that the juror made voluntary disclosure of his acquaintance.

(b) On page 27 of the Petition it is said: " . . . the examination of the juror in the presence of Counsel was calculated to harm the plaintiff." But the juror was not called to testify, as is disclosed by the absence of his testimony in the record before this Court.

3. The Petition's attempted statement of Federal questions, even had such questions been raised below, is so devoid of merit and insubstantial as to be frivolous.

4. The Petition does not disclose that any claimed Federal or Constitutional question was raised by Petitioner in either the trial court, the Court of Civil Appeals, or the Supreme Court of Texas, and the vague, statements, contained in Briefs of *Amici* in support of Motion for Rehearing of Petition for Writ of Error in the Supreme Court of Texas, as referred to on pages 33-42 of the Petition, are wholly inadequate to raise Federal questions for Petitioner.

5. This is a simple, common law negligence case brought in the court of a State wherein the law of con-

tributory negligence is in effect. No Federal statute was or could have been invoked. Applying State procedural and substantive law, and giving effect to a jury verdict, the trial court gave judgment to Respondent-Defendant, and overruled motion for rehearing; the Court of Civil Appeals affirmed, and overruled motion for rehearing; the Supreme Court of Texas, finding no reversible error, refused Writ of Error, and thereafter overruled an elaborate Motion for Rehearing, supported by numerous *Amici* Briefs. That three Courts, composed of thirteen Judges, have six separate times heard Petitioner-Plaintiff's contentions, establishes that due process of law has not been denied, even had such question been raised and ruled below.

6. Examination of the proceedings in the three Courts below, contained in the Record, will affirmatively disclose that no Federal or Constitutional question was raised or decided in the Courts below, and the elaborate, carefully reasoned opinion of the Court of Civil Appeals (224 S.W. 2d, 223) affirmatively discloses that due process of law was accorded, even though such question was not raised or expressly ruled.

7. The Petition for Certiorari is without merit. It suggests no question of public importance warranting review by this Court. It merely illustrates a "case in which losing counsel is outraged by the decision against him".—*Stern and Gressman, "Supreme Court Practice"*, page 199. The case stands upon its own peculiar facts, namely Petitioner-Plaintiff, almost 15 years of age, accompanied by two companions took his parents' automobile without their knowledge or consent, and started from Wilmington, California

for Arkansas. Soon they wrecked the car, and thereafter hitch-hiked onward toward their destination as far as Slaton, Lubbock County, Texas, at which point, while crawling under one train in Respondent-Defendant's yards, in an attempt to steal a ride on another train, Petitioner was injured. The jury found him guilty of contributory negligence upon adequate evidence, upon which finding judgment was rendered that he take nothing, which judgment has been consistently affirmed.

## CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Charles L. Cobb, one of the attorneys for Respondent, Panhandle and Santa Fe Railway Company, do hereby certify that a copy of the foregoing brief in opposition to Petition for Writ of Certiorari has been served upon Petitioner by depositing copies thereof in the United States Post Office at Lubbock, Texas, first class, postage prepaid, addressed to counsel of record for Petitioner, John J. Watts, 403 North Texas, Odessa, Texas, Robert Lee Guthrie and Searcy L. Johnson, 1608 Mercantile Bank Building, Dallas 1, Texas, Samuelson and Buck, Attorneys at Law, Long Beach, California, Warren E. Miller, 1012 Barr Building, 910 17th Street, N.W., Washington, D. C. and Walter Ely, 800 Statler Center, 900 Wilshire Boulevard, Los Angeles 17, California, on this 3rd day of July, 1957.

Charles L. Cobb

CHARLES L. COBB

Counsel of Record for Respondent.